

**United States Department of Labor
Employees' Compensation Appeals Board**

M.W., Appellant)	
)	
and)	Docket No. 20-0622
)	Issued: September 30, 2020
DEPARTMENT OF STATE, FOREIGN)	
SERVICE, Washington, DC, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 28, 2020 appellant filed a timely appeal from an October 15, 2019 merit decision and a November 12, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the October 15 and November 12, 2019 decisions, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether OWCP abused its discretion by denying appellant's request for authorization for an orthopedic mattress; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On August 28, 1977 appellant, then a 27-year-old special agent, filed a traumatic injury claim (Form CA-1) alleging that on August 14, 1977 he experienced a left thigh injury when jumping from a security car while providing physical security coverage for the Secretary of State while in the performance of duty. On October 20, 1987 OWCP accepted the claim for bilateral aseptic necrosis of femoral heads. It subsequently expanded the acceptance of appellant's claim to include drug-induced lupus, right femur secondary osteonecrosis, left femur secondary osteonecrosis, phlebitis and thrombophlebitis of deep vessels of lower extremities, phlebitis and thrombophlebitis of femoral vein, tuberculosis (TB) of vertebral column, right bone infection, arthropathy of the pelvic region and thigh, and infection and inflammatory reaction due to other internal device, implant, and graft.

Appellant initially stopped work on July 3, 1981. He worked intermittently from 1996 to 1998. Appellant stopped work again on May 11, 1998 and did not return. OWCP paid him wage-loss compensation and continued to authorize medical treatment, including hip and knee surgeries.

In a letter dated August 13, 2019, appellant requested authorization to purchase an orthopedic mattress. He noted that he needed to replace his current OWCP-authorized orthopedic mattress which he obtained in 2007.

In a development letter dated August 30, 2019, OWCP informed appellant of the type of evidence needed to support his request for a replacement mattress, including a statement from his physician that described the equipment and the medical reasons for recommending the equipment, the specific goals of or benefits expected from this equipment, how often he would utilize the equipment and the expected duration of its use, and a description of alternative treatment that might achieve the same results. It further requested at least two detailed quotes for the equipment and a description of any similar equipment that he owned.

X-rays of appellant's hips and pelvis, dated January 17, 2019, revealed a right total hip arthroplasty and a left total hip arthroplasty, both well seated and unchanged.

In a letter dated September 17, 2019, appellant noted that he was reluctant to schedule an appointment with his physician because OWCP failed to correct a bill related to a July 24, 2018 examination. He further indicated that it may be difficult to schedule an appointment with his physician. Appellant requested information from OWCP on when and how often medical examinations would occur. He also requested reassignment of his claim to a different claims examiner.

Memoranda of telephone calls (Form CA-110) dated September 25 through October 15, 2019, indicated that OWCP advised appellant of the procedures for reimbursement for medical examinations and authorization for medical equipment.

By decision dated October 15, 2019, OWCP denied appellant's request for authorization to purchase an orthopedic mattress as the evidence of record did not support that this equipment was medically necessary to address the effects of the accepted work-related injury.

On November 5, 2019 appellant requested reconsideration. In accompanying statements, dated October 31, 2019, he explained that he attempted to schedule an orthopedic evaluation, but was unable to do so because of his physician's schedule and the brief 30-day window. Appellant recounted that he underwent two nonrelated surgeries during this period. He reiterated his concerns related to his reimbursement request for a July 24, 2018 medical examination. Appellant alleged that OWCP ignored his requests for additional information and required excessive, retaliatory medical examinations. He indicated that he could obtain an opinion from his physician on the necessity of an orthopedic mattress at his next mandated examination in January 2020. No additional evidence was received.

By decision dated November 12, 2019, OWCP denied appellant's request for reconsideration of the merits of his claim.

LEGAL PRECEDENT -- ISSUE 1

Section 8103(a) of FECA³ provides for the furnishing of services, appliances, and supplies prescribed or recommended by a qualified physician which OWCP, under authority delegated by the Secretary, considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation.⁴ In interpreting section 8103(a), the Board has recognized that OWCP has broad discretion in approving services provided under section 8103, with the only limitation on OWCP's authority is that of reasonableness.⁵

In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury by submitting rationalized medical evidence that supports such a connection and demonstrates that the treatment is necessary and reasonable.⁶ While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.⁷

³ *Supra* note 1.

⁴ 5 U.S.C. § 8103(a); *see S.A.*, Docket No. 18-1024 (issued March 12, 2020).

⁵ *R.M.*, Docket No. 19-0163 (issued July 17, 2019); *Mira R. Adams*, 48 ECAB 504 (1997).

⁶ *See R.M.*, Docket No. 19-1319 (issued December 10, 2019); *Debra S. King*, 44 ECAB 203 (1992).

⁷ *See L.S.*, Docket No. 18-1746 (issued April 9, 2019); *Kennett O. Collins, Jr.*, 55 ECAB 648, 654 (2004).

ANALYSIS -- ISSUE 1

The Board finds that OWCP did not abuse its discretion in denying appellant's request for authorization for an orthopedic mattress.

On August 13, 2019 appellant requested authorization to purchase an orthopedic mattress. In response to OWCP's development letter, dated August 30, 2019, he submitted x-rays of the hips and pelvis and a statement explaining that he was reluctant to, and that it may be difficult to schedule an appointment with his physician.

Orthopedic mattresses or hospital beds may be authorized when prescribed by the attending physician to relieve orthopedic or other medical conditions.⁸ OWCP procedures require that upon receipt of a physician's report describing the need for special equipment and furniture, such as an orthopedic mattress, the opinion of OWCP's medical adviser should be obtained prior to authorization, and a second opinion may also be necessary.⁹

The Board finds that the medical evidence of record did not contain a rationalized medical opinion from a physician explaining how an orthopedic mattress would cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of monthly compensation.¹⁰ As such, OWCP did not abuse its discretion by denying authorization for an orthopedic mattress. As to appellant's assertion that OWCP previously paid for a mattress in 2007, the Board notes that OWCP is not precluded from exercising its discretion to deny authorization for a replacement mattress because of the previous authorization.¹¹

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8128 (a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation, at any time, on his or her own motion or on application.¹²

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by

⁸ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3.c(1) (October 1990); *see J.B.*, Docket No. 16-1173 (issued February 16, 2017).

⁹ *Id.* at Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.17.h(1) (June 2014).

¹⁰ *Supra* note 4.

¹¹ *M.B.*, Docket No. 17-1679 (issued February 8, 2018).

¹² 5 U.S.C. § 8128(a); *see T.K.*, Docket No. 19-1700 (issued April 30, 2020); *W.C.*, 59 ECAB 372 (2008).

OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹³

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁴ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁵ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.¹⁶

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

In his timely request for reconsideration, appellant explained that he attempted to schedule an orthopedic evaluation, but was unable to because of his physician's schedule and the brief 30-day window. His narrative statement did not attempt to show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP. Additionally, appellant's statement is not medical evidence, and he did not submit any medical evidence along with his request for reconsideration. The Board therefore finds that he failed to show that OWCP erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered by OWCP, or constituted relevant and pertinent new evidence not previously considered by OWCP.¹⁷ Consequently, he is not entitled to a review of the merits of his claim based on any of the above-noted requirements under 20 C.F.R. § 10.606(b)(3).

On appeal appellant alleged that he received no reply or guidance from OWCP on how to obtain authorization for medical equipment. However, the Board finds that OWCP properly sent appellant a development letter, dated August 30, 2019, detailing the type of evidence needed to support his request for an orthopedic mattress and responded to his multiple inquiries. Appellant further asserted that OWCP did not give him sufficient time to obtain the necessary medical evidence from his physician. However, he was able to submit relevant and pertinent new evidence not previously considered by OWCP with a request for reconsideration received by OWCP within one year of the October 15, 2019 merit decision.¹⁸

¹³ 20 C.F.R. § 10.606(b)(3); *see C.C.*, Docket No. 19-1622 (issued May 28, 2020); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁴ *Id.* at § 10.607(a); *see K.T.*, Docket No. 18-0927 (issued May 13, 2020).

¹⁵ *Id.* at § 10.608(a); *see F.V.*, Docket No. 18-0230 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

¹⁶ *Id.* at § 10.608(b); *see C.C.*, *supra* note 13; *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁷ *Supra* note 13.

¹⁸ *Supra* note 14.

The Board therefore finds that OWCP properly determined that appellant was not entitled to further review of the merits of his claim pursuant to any of the three requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹⁹

CONCLUSION

The Board finds that OWCP did not abuse its discretion in denying appellant's request for authorization for an orthopedic mattress. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the November 12 and October 15, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 30, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁹ *D.M.*, Docket No. 18-1003 (issued July 16, 2020); *Susan A. Filkins*, 57 ECAB 630 (2006) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).